STATE OF MICHIGAN

COURT OF APPEALS

GLORIA JEAN MCLAURIN,

Plaintiff-Appellant,

v

DETROIT PARKING VIOLATIONS BUREAU and SHAWNY DEBERRY,

Defendants-Appellees,

and

COURIER & I INC, GIRSEL BOWIE, and KEITH GANT,

Defendants.

UNPUBLISHED
October 26, 2010

No. 293700
Wayne Circuit Court
LC No. 08-123362-NZ

Before: O'CONNELL, P.J., and BANDSTRA and MARKEY, JJ.

PER CURIAM.

Plaintiff appeals by right in propria persona from the trial court's order granting defendants-appellees' motion for summary disposition. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

This suit arose from numerous parking tickets issued to plaintiff over the course of several years. Plaintiff apparently neither paid nor disputed them, and the penalties assessed accumulated to thousands of dollars. Eventually, plaintiff's car was booted, towed, and impounded. She requested an administrative hearing, but the hearing referee decided against her. There is no evidence that plaintiff ever appealed this decision. On May 15, 2007, the city of Detroit filed a complaint, No. 07-123408-GC, in the 36th District Court for the outstanding parking violation assessments, which, by that time, totaled $7,404. The city failed to personally serve plaintiff and instead served plaintiff by publication; plaintiff, however, had no actual notice

of the complaint.[1] On January 8, 2008, plaintiff learned that the city had obtained a default judgment against her. She sought to have the judgment set aside, and the trial court granted the request, setting a bench trial date of March 31, 2008. Plaintiff and parking employees testified at the trial. The court entered judgment for the city in the amount of $4,684. Plaintiff appealed that judgment, Wayne Circuit Court Docket No. 08-109686-AV, but her appeal was dismissed because she failed to timely file a transcript.

On September 12, 2008, plaintiff filed this suit in propria persona, alleging various tort claims and constitutional violations. She asserted that the city committed perjury in failing to tell the district court that there was an earlier case already heard in the administrative tribunal and indicated that for this reason the city's 2008 claim should have been dismissed.

Defendants moved for summary disposition, asserting that plaintiff failed to state a claim and that the suit was barred by governmental immunity and because plaintiff raised no new issues. The trial court agreed, noting that defendants had not acted improperly in bringing the collection action in the district court instead of the administrative tribunal. The collection action was not the same as the original administrative hearing. Because plaintiff did not timely perfect her appeal of the district court action, the judge no longer had authority to review that decision. Finally, the trial court noted that the only issue remaining before it was whether plaintiff pleaded in avoidance of governmental immunity. The court ruled that plaintiff had not stated a claim within any of the exceptions to immunity, and so granted defendants' motion.

We review de novo a trial court's decision to grant or deny a motion for summary disposition. *Spiek v Dep't of Transp*, 456 Mich 331, 337; 572 NW2d 201 (1998). When substantively admissible evidence submitted at the time of the motion, viewed in the light most favorable to the party opposing the motion, supports the motion, the opposing party must come forward with at least some evidentiary proof of specific fact upon which to base her case. *Maiden v Rozwood*, 461 Mich 109, 120-121; 597 NW2d 817 (1999); *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994). We also review de novo questions of statutory interpretation. *Detroit v Ambassador Bridge Co*, 481 Mich 29, 35; 748 NW2d 221 (2008).

As the trial court found, the city properly filed its collection action in the district court. Parking violations bureaus are authorized under MCL 600.8395 "to accept civil infraction admissions in parking violation cases and to collect and retain civil fines and costs as prescribed by ordinance." Plaintiff's administrative tribunal decision determined the amount she owed due to her alleged civil infractions, as well as implicitly ruling that the tickets were valid. She could have appealed this decision, but she did not. When she failed to pay the outstanding fine, the city was within its rights to pursue a collection action. "The district court has exclusive jurisdiction in civil actions when the amount in controversy does not exceed $25,000.00," MCL 600.8301(1), and it "has jurisdiction over civil infraction actions," MCL 600.8301(2). Thus, the district court had jurisdiction over the suit to collect the civil infraction assessments.

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[1] The non-appellee defendants are the two process servers and their firm; they were dismissed with prejudice by stipulated order. They are not part of this appeal.

We also conclude that defendants did not commit perjury when on the complaint it asserted, "There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the Complaint." Administrative proceedings are not "civil actions" as defined by MCR 2.101 because they are not commenced by filing a complaint with a court. See *Tenbusch v Dep't of Civil Service*, 172 Mich App 282, 297; 431 NW2d 485 (1988), adopting the view of *Oliver v Dep't of State Police*, 132 Mich App 558, 572-578; 349 NW2d 211 (1984)(holding that an appeal of an administrative decision was not a "civil action" within the meaning of MCL 600.6013 governing interest); see also *Mair v Consumers Power Co*, 419 Mich 74, 82-83; NW2d (1984) (holding administrative proceedings do not toll the statute of limitations under MCL 600.5856 regarding filing a complaint and perfecting service on the defendant). There was nothing illegal or improper about defendant's collection suit.

We also agree with the trial court that plaintiff did not plead in avoidance of governmental immunity. MCL 691.1407(1) broadly exempts government agencies from tort liability if the agency is engaged in the discharge of a governmental function, unless one of the five exceptions is pleaded. The statutory exceptions to governmental immunity consist of the highway exception, MCL 691.1402, the proprietary function exception, MCL 691.1413, the governmental hospital exception, MCL 691.1407(4), the motor vehicle exception, MCL 691.1405, the public building exception, MCL 691.1406, and the exception for sewage disposal system events, MCL 691.1417(2). *Odom v Wayne Co*, 482 Mich 459, 478 n 62; 760 NW2d 217 (2008). The trial court correctly found that none of these exceptions applies. Plaintiff's suit against defendants can only succeed if defendants were not engaged in the discharge of a governmental function. A "governmental function" is an activity expressly or impliedly mandated or authorized by constitution, statute, local charter or ordinance, or other law. MCL 691.1401(f); *Maskery v Univ of Mich Bd of Regents*, 468 Mich 609, 613-614; 664 NW2d 165 (2003). This definition is to be broadly applied. *Id*. at 614. It only requires that there be some constitutional, statutory, or other legal basis for the activity in which the agency was engaged. The definition of governmental function necessarily means that activities unauthorized by law, i.e., ultra vires acts, are not immune. *Richardson v Jackson Co*, 432 Mich 377, 381; 443 NW2d 105 (1989). The determination whether an activity involves a governmental function must focus on the general activity, not the specific conduct involved at the time of the tort. *Tate v Grand Rapids*, 256 Mich App 656, 661; 671 NW2d 84 (2003). As noted above, MCL 600.8395 authorizes defendants "to accept civil infraction admissions in parking violation cases and to collect and retain civil fines and costs as prescribed by ordinance." Defendants' acts were therefore authorized by law and thus are granted statutory immunity.

Plaintiff also sued an individual government employee, Shawny DeBerry. Individual government employees enjoy only qualified immunity for intentional torts. *Odom*, 482 Mich at 461. But plaintiff made no allegations of any specific actions undertaken by DeBerry. In fact, except for the caption and proof of service, DeBerry's name does not appear in the complaint. Any intentional tort claim against her fails because plaintiff has not pleaded the necessary elements. A pleader may not rest on conclusions that are not supported by factual allegations in an attempt to state a cause of action. *ETT Ambulance Service v Rockford Ambulance, Inc*, 204 Mich App 392, 395; 516 NW2d 498 (1994). Plaintiff's substantive claims lack factual support. In response to defendants' motion for summary disposition, plaintiff was required to present at

least some evidentiary proof, some statement of specific fact upon which to base her case. *Skinner*, 445 Mich at 161. This she did not do.

We affirm. As the prevailing party defendant may tax costs pursuant to MCR 7.219.

/s/ Peter D. O'Connell
/s/ Richard A. Bandstra
/s/ Jane E. Markey